The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VINCENTIUS PAULUS BUIL and JOSEPHUS HUBERTUS EGGEN

Appeal No. 2006-0531
Application 09/932,070

ON BRIEF

Before THOMAS, DIXON, and KRASS, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1 through 9 and 11 through 13.

Representative claim 1 is reproduced below:

1. A system for browsing a collection of information units, comprising presentation means for presenting at least one of said information units, and attribute means for associating a respective one of said information units with an attribute value, wherein the system comprises random selection means for automatically randomly selecting and presenting a unit whose attribute value meets a criterion, the selection and presentation being made without interaction by a user.

The following references are relied on by the examiner:

Cluts	5,616,876	Apr. 1, 1997
Looney et al.	5,969,283	Oct. 19, 1999
Dunning et al. (Dunning)	2003/0229537	Dec. 11, 2003 (Filed Apr. 30, 2001)

Claims 1 through 9 and 11 through 13 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Cluts in view of Looney as to claims 1 through 5, 9 and 11 through 13. The examiner adds Dunning as to claims 6 through 8.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief (no reply brief has been filed) for appellants' positions, and to the answer for the examiner's positions.

OPINION

At least for the reasons set forth by the examiner in the answer, we sustain the rejections of all claims on appeal under 35 U.S.C. § 103. Because we find the teachings and suggestions in Cluts more compelling than even the examiner appears to recognize, the examiner's additional reliance upon Looney appears to be cumulative to those already taught in Cluts.

Independent claim 1 requires the association of the claimed attribute values with respective information units. There is also recited automatically randomly selecting and presenting the information units whose corresponding attribute value meets a given criterion. This selection and presentation is stated to be

in the form of a negative limitation, that is, without interaction by a user.

At least with respect to those portions of Cluts specifically relied upon by the examiner (column 4, lines 38 through 54; column 14, lines 28 through 50 and column 18, lines 51 through 54), Cluts effectively in our view teaches the substance of the subject matter of representative independent claim 1 on appeal. In Cluts, at least with respect to the style tables and the ability to utilize a so-called style slider, there exists an association as claimed of an individual song or information unit with a criterion such as a given style of music. Additionally, at least one seed song entered by a user may correspond to the claimed criterion which is met by the structure and software in a comparison operation which functions in an automatic random selection and presentation process to present the new selections of songs to the user.

Contrary to the apparent view expressed by the examiner at the bottom of page 4 of the answer, it appears to us from our study of this reference that Cluts does automatically

select and present a new song without interaction by a user. It is emphasized here that the requirement of claim 1 is that this automatic selection and automatic presentation be done without an interaction by the user, thus indicating in the claim that the user may specify a given criterion. Even appellants disclose an invention and in an example require a user to enter into the overall system as disclosed a criterion on which the system is to automatically and randomly select a given new song for presentation. The ability of the user in Cluts to select a so-called seed song or initial criterion as well as to set a style slider mechanism to a given position permits the user in Cluts to establish a relative association of a given style to individual songs. The user also has the ability to select the "more style" button and the "more" and "like" buttons as depicted in Figures 5 through 10. In any event, the flow chart element 1020 in Figure 10 clearly corresponds to the teaching relied upon by the examiner at column 18, lines 51 through 54 that the system automatically does a random sort of a list of songs before presentation to a listener.

With this understanding in mind of Cluts, it appears to us that there is no feature of claim 1 that has not been met by Cluts itself. Correspondingly, these teachings already identified in Cluts has a corresponding analogous teaching in Looney as generally outlined by the examiner in relying upon the abstract, column 2, lines 5 through 18; column 10, lines 49 through 57 and finally, column 9, lines 34 through 59 in the answer. Basic relationships are set forth in Figure 4 which shows different screens presented and, for example, Figure 5 and the controls in Figure 6. The showing in Figure 5 of element 428 as well as the corresponding showing of the controls in Figure 6 of element 542 clearly provide the ability of the user in Looney's system to permit playback of music in a random manner. Additionally, various categories or styles or associations of given songs with respect to styles are depicted in Figures 11 through 17, and 23 through 25.

For their part, appellants' brief argues substantially only the alleged view that the examiner has not provided adequate motivation of combinability of the teachings and suggestions of Cluts and Looney in the statement of the rejection. Since we

have previously found that Cluts teaches substantially all of the subject matter of representative independent claim 1 on appeal, the arguments are found unpersuasive. Additionally, from our previous analysis of both references, it should be apparent to the artisan that there actually are significant overlapping teachings between the references, thus leading to provide a basis in the art for the examiner's broadly defined view of the combinability, that the randomization feature is desirable to prevent the monotony of being presented the same songs in the same order as well as the fact that this capability of random selection by a system other than the user is well known and established in the art.

In addition to the examiner's treatment of five different topic headings in the Responsive Arguments portion of the answer beginning at page 6, our earlier discussion with respect to both references relied upon clearly leads us to conclude that there are no bases in the brief of the view expressed that the examiner has exercised impermissible hindsight in the combination of references. Even at the bottom of page 16 of the brief, in characterizing the examiner's view that it was well known in the art to randomize the function of CD players, appellants have not

denied this assertion made by the examiner on its merits. Appellants' further argument beginning at the bottom of page 15 of the brief is unpersuasive to us in urging patentability of the claimed invention. Appellants first mischaracterize the teaching value of both references by indicating the effective undesirability of combining a system for selecting music on the basis of subjective content, Cluts, with a reference that teaches conventional randomization, presumably Looney. Because both references teach the ability to categorize music on the basis of various styles, both references teach the same ability to randomly provide the broadly defined association of the broadly defined informational unit with the broadly defined attribute. Contrary as well to the view expressed at the bottom of page 15, there is no requirement within 35 U.S.C. § 103 of any one reference specifically teaching how it is to be combined with another reference.

Since no particular distinction has been made in the brief as to the system independent claim 1 and the method independent claim 11, claim 11 falls with our consideration of representative

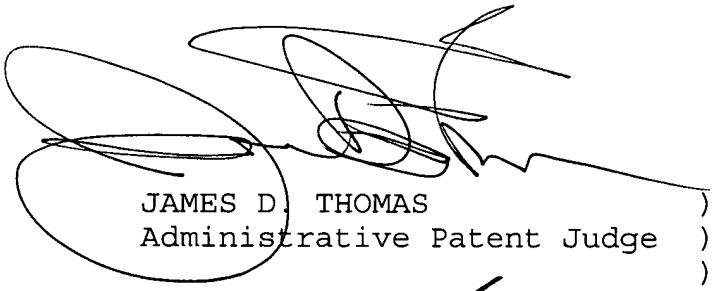
claim 1 on appeal. Additionally, we observe that as to the product claim 13, the teaching beginning at column 22, line 51 to the end of the patent of Cluts clearly contemplates this feature.

Lastly, because page 18 of the brief does not distinguish features of the dependent claims in the second stated rejection and because patentability is urged only on the bases of dependency from independent claim 1 on appeal, dependent claims 6 through 8 fall with our consideration of their parent independent claim 1. Additionally, no other arguments are presented as to any other dependent claims on appeal for our consideration in this appeal.

In view of the foregoing, the decision of the examiner rejecting all claims on appeal under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED



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